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341 Meeting

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September 28, 2016

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In Re: Planet Merchant Processing, Inc.

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Case No. 16-81243

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TRANSCRIPT FROM AUDIO RECORDING

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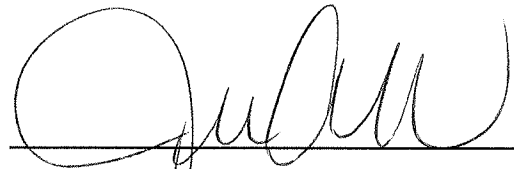
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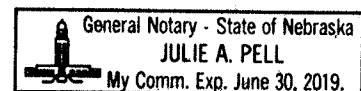
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C E R T I F I C A T E

I, Julie A. Pell, RPR, CRR, CSR, General Notary Public, do hereby certify that the transcript of these proceedings was prepared from an audio recording made available to me by the Office of the United States Trustee, and that although I was not present during the recording of these proceedings, I transcribed the following pages and they are a true and accurate representation of the recording made.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Lincoln, Nebraska, this 17th day of October, 2016.


JULIE A. PELL, RPR, CRR, CSR
General Notary Public



1 (The following proceedings occurred on
2 September 28, 2016, as follows:)

3 TRUSTEE JENSEN: We're here today on
4 September 28th, 2016, to conduct a Section 341 first
5 reading of creditors in the Chapter 11 case of Planet
6 Merchant Processing, Incorporated, Case
7 Number 16-81243.

8 My name is Jerry Jensen. I am an attorney
9 in the Office of the United States Trustee, a
10 division of the U.S. Department of Justice. Today's
11 meeting is required under Section 341 of the
12 bankruptcy code.

13 The purpose of the meeting is to allow for
14 an examination under oath. Questions may include,
15 but are not limited to, why the case was filed, the
16 operation of the business and the prospects for
17 reorganization.

18 I will initially ask the debtor's
19 representative some questions. Then I'll give a --
20 an -- creditors an opportunity to enter their
21 appearance and ask any questions that they would
22 like.

23 As a reminder, the meeting is being
24 digitally recorded, so remember to give verbal
25 responses which can be picked up on the recorder.

1 The U.S. Trustee maintains a recording of the
2 proceeding. If anyone would like to obtain a
3 duplicate of today's proceeding or a transcript,
4 arrangements may be made through the U.S. Trustee's
5 Office.

6 And would counsel for the debtor please
7 enter his appearance?

8 MR. KING: Please show the appearance of
9 Sam King for Planet Merchant Processing.

10 TRUSTEE JENSEN: Thank you.

11 And, Mr. O'Brien, would you please state
12 your name and position with the corporation for the
13 record?

14 MR. O'BRIEN: Dennis O'Brien, president of
15 debtor.

16 TRUSTEE JENSEN: Okay. And would you
17 please raise your right hand to be sworn in?

18 DENNIS O'BRIEN,

19 Of lawful age, being first duly cautioned and
20 solemnly sworn as hereinafter certified, was
examined and testified as follows:

21 (Witness' response to oath - "Yes.")

22 TRUSTEE JENSEN: Okay. Thank you.

23 EXAMINATION

24 BY TRUSTEE JENSEN:

25 Q. And how long have you served as president of

O'BRIEN - Examination

1 the corporation?

2 A. Six weeks.

3 Q. Okay. And were you involved in any other
4 capacity with the company prior to being president?

5 A. Yes.

6 Q. Okay.

7 A. I am on the board of directors.

8 Q. Okay. And what are your responsibilities as
9 president?

10 A. To oversee and guide the operations of the
11 business.

12 Q. Are you involved in the day-to-day
13 operations?

14 A. Day to day? No.

15 Q. Okay. Who was the former president of the
16 corporation?

17 A. Tom Nichting.

18 Q. And why did he -- and why was he replaced by
19 you?

20 A. Why I replaced him? He did not want to be
21 associated with the bankruptcy if he didn't have to
22 be.

23 Q. Okay. Why did the debtor file the
24 Chapter 11 case? What was the main reason that you
25 needed to file for bankruptcy relief?

1 A. Because we were losing money.

2 Q. Approximately how long has Planet Merchant
3 been in business?

4 A. More than ten years.

5 Q. Okay. Has the business changed during those
6 ten years at all or has it pretty much done the same
7 type of business?

8 A. Same type of business throughout.

9 Q. Okay. What's the current status of the
10 business operations of the -- is it -- is the debtor
11 operating at the present time?

12 A. Yes.

13 Q. Okay. And what is it doing right now?

14 A. It is developing its software, continuing --
15 continuing to maintain its software.

16 Q. Is it continuing to provide any services to
17 the customers at this time?

18 A. No.

19 Q. Okay. When did it stop providing services,
20 approximately?

21 A. Yeah. About a week ago.

22 MR. KING: Yeah. It was right when we had
23 the preliminary injunction hearing, which I think was
24 the 13th.

25 Q. (By Trustee Jensen) Okay. Are there any

1 related entities to Mer- -- Planet Merchant
2 Processing?

3 A. "Related entities." What do you mean by
4 that?

5 Q. Okay. Planet Merchant -- well, let's just
6 go through the structure, I guess. Planet Merchant,
7 it's my understanding, is owned by Planet Group,
8 Incorporated; is that correct?

9 A. Yes.

10 Q. Okay.

11 A. Hundred percent.

12 Q. Okay. And what does Planet Group,
13 Incorporated, do? Is that just a holding company, or
14 is that an operating entity of any kind?

15 A. It's a holding company.

16 Q. Okay. Does Planet Group, Incorporated, own
17 other entities also?

18 A. Planet Group?

19 Q. Yeah.

20 A. Yes. It owns Workpoint, LLC. It owns
21 Planet Consulting. It owns -- Planet Consulting is
22 an LLC. It owns Planet Correspondence Technologies,
23 Inc., and then it owns the debtor.

24 Q. Okay. Does the debtor currently have any
25 employees?

1 A. Um...

2 Q. Or -- and if not, explain it to me, how that
3 works, I guess to the best -- and...

4 A. So from a practical standpoint, yes, I think
5 of these employees as -- these people as employees.
6 From a legal aspect, I am not really sure how they're
7 classified. But, yeah, about 25 people involved in
8 the operation of the business.

9 Q. Okay. But they may be technically employees
10 of a different entity, is my understanding, to Planet
11 Group, Inc.?

12 A. Yes.

13 Q. Is that...

14 A. That's correct.

15 Q. And are those 25 people still working at the
16 present time?

17 A. Yeah.

18 Q. So they're still continuing to operate,
19 whatever they're doing, developing software or -- is
20 that...

21 A. Yes.

22 Q. Okay. Have any employees left since the
23 filing of the case?

24 A. No.

25 Q. What are the plans for the restructuring of

1 the bu- -- of the debtor or any other plans that --
2 with regards to what you plan to do in the bankruptcy
3 proceeding?

4 A. So step one is to reject the contracts.
5 Step two is to try to renegotiate the contracts, and
6 then step three would be, if both of those fail, then
7 we would look at an orderly sale of the company.

8 Q. So at the present time the contracts have
9 been rejected, so you're working on step two at the
10 present time, trying to renegotiate the contracts?
11 Is that correct?

12 A. I...

13 Q. Or what is the status of...

14 A. The debtor has made two offers since the
15 filing, two offers to the customers to renegotiate
16 the contracts, and there has been no counter.

17 Q. And it's my understanding there are four --
18 four customers? Is that correct?

19 A. Yes. Yes.

20 Q. Have there been other customers in the past
21 or has it always been these four customers that have
22 been customers of...

23 A. In the nine years that I have been involved,
24 there was one other customer for a period of about a
25 year called Mercury Payments.

1 Q. All right. Now I am going to ask some
2 questions from the schedules that you filed at this
3 time. Did you sign the petition, schedules,
4 statements and related documents, and is the
5 signature your own?

6 A. Yes.

7 Q. Did you read those documents before you
8 signed them?

9 A. Yes.

10 Q. And are you personally familiar with the
11 information contained in those schedules and
12 documents?

13 A. For the most part, yes.

14 Q. Okay. To the best of your knowledge is the
15 information contained in the petitions, schedules and
16 statements true and correct?

17 A. Yes.

18 Q. Are all of your assets identified in the
19 schedules?

20 A. Yes.

21 Q. Have you listed all of the creditors on the
22 schedules?

23 A. Yes.

24 Q. Okay. And Schedule A indicates no real
25 estate is owned by the corporation; is that correct?

1 A. Yes.

2 Q. Okay. Does the debtor lease the space that
3 it's currently operating from?

4 A. No.

5 Q. Tell me about that then.

6 A. Sure. The parent company, Planet Group,
7 Inc., leases the office building on 117th Street
8 and...

9 Q. Does the parent corporation then charge rent
10 to the subsidiary, or do you know?

11 A. It does not. It has not the last few years.

12 Q. Okay.

13 A. There was a time seven or eight years ago
14 where the parent company allocated a lot of the
15 overhead across the different business units, and Tom
16 Nichting stopped that, I am guessing, five years ago.

17 Q. Okay. The schedules indicate there were
18 approximately \$409,000 worth of accounts receivable
19 on the date of filing. Have you collected those or
20 are they collectible?

21 A. They are all collectible. We have collected
22 most of that money.

23 Q. Part ten of Schedule B talks about
24 intangibles and intellectual properties. And just
25 without getting into a lot of detail, I just want to

1 know what these are and whether -- and basically
2 whether you think they have any value, the first one
3 being Acquire360?

4 A. Acquire360 is the main software of the
5 business. And, yes, it has a lot of value.

6 Q. Do you have any estimate of what the value
7 might be, or is that difficult to determine?

8 A. Difficult to determine.

9 Q. The next one is E360.

10 A. That is another software module that would
11 have less value than A360. Also very difficult to
12 determine the value of that --

13 Q. Okay.

14 A. -- asset.

15 Q. The next one is a transaction reject and
16 repair application.

17 A. Yes. That is a module that's used along
18 with the A360 product, transaction repair and
19 replace, and that would have far less value than
20 A360.

21 Q. And then there's a balance reconciliation?

22 A. Yes. The same answer as for TRR. The same
23 would be true for BR -- for balance reconciliation.

24 Q. It's a module that you use with...

25 A. It's a module used along with A360.

1 Q. Okay.

2 A. It's probably not of much value without
3 A360.

4 Q. Schedule D asked for secured creditors. Is
5 it correct that no creditor, to your knowledge, has a
6 security interest or a lien on any assets owned by
7 the debtor?

8 A. Yes. That's true.

9 Q. Okay. Are you aware of any tax obligations
10 that would be owed either to the IRS or a state
11 taxing authority?

12 A. No.

13 Q. On schedule of creditors, unsecured
14 creditors, Planet Correspondence Technologies,
15 Incorporated, which I believe is one of the entities
16 you indicated was owned by Planet Group, is listed as
17 being owed 152,000. What was that for?

18 A. I am not -- I don't know.

19 Q. Okay. What does Planet Correspondence
20 Technologies, Incorporated, do?

21 A. It's a so- -- a provider of software for
22 what they call unified communications. An example of
23 that software would be they have a customer, CIDC, a
24 large Canadian bank, and when that bank wants to
25 communicate with its customers, whether it be

1 depositors or loan customers or a trust company,
2 investment customers, the bank may want to
3 communicate with their customers via text, via fax,
4 via voice, via e-mail, through various channels, and
5 this is a software that helps the bank manage that
6 com- -- those communication channels to the
7 customers.

8 Q. As a follow-up question to the employees, do
9 the employees that work for this -- for the debtor
10 entity, either as employee of the debtor or of Planet
11 Group, Incorporated, also provide services to these
12 other entities?

13 A. None of the employees that are involved in
14 the operation of the debtor, none of them are
15 involved in -- in the other entities.

16 Q. Okay. Planet Group, Incorporated, is listed
17 as being owed in excess of \$12 million. Do you know
18 what that -- what that debt would be for?

19 A. Yes. Most of that is made up of
20 compensation related to the employees that work on
21 the debtor's business. And so the way it would work
22 is -- the way it does work is that Planet Group pays
23 those employees through their payroll system and
24 provides benefits to them.

25 And then at the end of each month Planet

1 Group, the parent, bills, invoices the debtor for the
2 cost of those employees. So that would be the
3 payroll plus benefits plus taxes, if paid, plus any
4 fringe-related costs.

5 There's no markup. That would be more than
6 80 percent of the balance would be my guess, is more
7 than 80 percent of that \$12 million relates to
8 compensation.

9 Q. And do you -- do you believe that the debtor
10 will owe anything to the four customers as a result
11 of the rejection of the contracts?

12 A. Um...

13 Q. If you know. I mean, if you don't know...

14 A. I don't know.

15 Q. Okay. On question number six of the
16 statement of financial affairs requests gross
17 revenues from business. In 2014 the revenue was
18 4.5 million. In 2015 the revenue was 3.5 million.
19 Why was there a decrease in revenue of approximately
20 a million dollars --

21 A. Um...

22 Q. -- that year?

23 A. My guess is it would have to do with what we
24 call custom work. So the four customers request the
25 debtor to provide services to enhance the processing

1 capabilities around A360. And so our employees will
2 provide custom development work for them and charge
3 them for that on an hourly or a fixed-bid basis. And
4 that amount of that custom work fluctuates from year
5 to year.

6 Q. Okay.

7 A. Or it could also be one-time license sales.
8 So, for example, the TRR and the BR products are
9 newer products that may have been licensed very
10 recently, and, you know, they might have been
11 licensed for 300- or \$500,000.

12 Q. Okay. And where's the bank account at for
13 Planet Merchant Processing?

14 A. Well, today it's at Wells Fargo as a
15 debtor-in-possession account.

16 Q. Oh, okay. So that's a new account that
17 you've opened or will be opening?

18 A. It is opened.

19 Q. Okay.

20 A. It's the only bank account at this time.

21 Q. Okay. Does the debtor have insurance
22 coverage on its assets?

23 A. Yes.

24 Q. Okay.

25 A. The -- through the parent company --

1 Q. Okay.

2 A. -- the assets are insured.

3 Q. Are you aware of the requirement to file
4 monthly operating reports with the bankruptcy court?

5 A. Yes.

6 Q. Okay. Do you anticipate that the debtor
7 will need to borrow any money during the bankruptcy
8 proceeding?

9 A. Yes.

10 Q. Do you anticipate that the money would be
11 borrowed from the parent company or how would -- who
12 would be -- who do you anticipate borrowing money
13 from?

14 A. That's the most likely source --

15 Q. Okay.

16 A. -- is the parent.

17 Q. Has the parent loaned money to the -- to the
18 debtor as -- since the filing of the case?

19 A. No.

20 TRUSTEE JENSEN: That's all the questions I
21 have at this time. Now I am going to give an
22 opportunity for creditors that are present to ask any
23 questions.

24 And, Mr. Grams, do you want to start?

25 MR. GRAMS: I will.

1 TRUSTEE JENSEN: Okay. Do you want to
2 enter -- you need to state your name and who you
3 represent.

4 MR. GRAMS: Sure. I am Jason Grams. I am
5 here for First American Payment Systems.

6 EXAMINATION

7 BY MR. GRAMS:

8 Q. I am going to refer to First American
9 Payment Systems as FAPS probably. If I refer to
10 Planet Merchant Processing it will be as PMP or
11 debtor, and the parent, Planet Group, Incorporated,
12 as PGI or parent. Is that fair enough?

13 A. Yes.

14 Q. Okay. Can you hear me okay?

15 A. Yes.

16 Q. All right. Last night you filed an amended
17 declaration form two thousand -- or, 202. I have got
18 that on the docket as docket 132. It was filed
19 yesterday at 4:36. Are you familiar with that?

20 A. Yes, I am.

21 Q. Okay. And is that your signature at the
22 bottom of the first page?

23 MR. KING: Well, he hasn't signed it.
24 That's not his signature, but...

25 Q. (By Mr. Grams) Is that your electronic

1 signature at the bottom of it?

2 MR. KING: Yes.

3 A. Yes.

4 Q. (By Mr. Grams) Okay. And all of the
5 questions he asked you earlier about signing under
6 penalty of perjury and being familiar with the
7 contents, those apply to this document as well to
8 the -- as the other schedule?

9 A. Okay.

10 Q. Okay. Well, is that -- is that correct?

11 A. Ask the question again, and I'll answer.

12 Q. Okay. All of the -- all of the questions he
13 asked you about, the authenticity of the document and
14 your having signed it under penalty of perjury that
15 applied to the schedules that Jerry just asked you
16 about apply to this document as well as to that
17 document; is that correct?

18 A. I don't know if that's correct.

19 MR. KING: You're talking about the
20 original schedules? We'll stipulate to that.

21 MR. GRAMS: You will?

22 MR. KING: Yeah.

23 MR. GRAMS: Excellent. Okay.

24 Q. (By Mr. Grams) I have just a few questions
25 about this. On page three -- and it says page six at

1 the bottom. It's three of four at the top.

2 A. Got it.

3 Q. I just wanted to ask you about line 65. The
4 original schedule, I'll represent to you, didn't say
5 anything for goodwill, and now the new schedule says
6 "see attached." Does that attachment refer to what's
7 titled Amended Schedule B, which is the next page of
8 this document?

9 A. That's -- Attachment B is up here on line
10 60. It's goodwill. I don't know.

11 MR. KING: Yeah.

12 MR. GRAMS: It does?

13 MR. KING: Yep.

14 MR. GRAMS: All right. And -- and so I am
15 going to...

16 MR. KING: And that's -- it's not goodwill.
17 It's just -- it's hard to fit in "see attached" in
18 the appropriate space. So I think it would go in the
19 column above that, other intangibles or intellectual
20 property.

21 MR. GRAMS: That's fine. I just wanted to
22 make sure that's what you meant to do.

23 MR. KING: Yep. Yep.

24 Q. (By Mr. Grams) So -- okay. So -- and I
25 want to look at the Amended Schedule B. And this is

1 page four of the document I just handed you, number
2 132. And I am going to have you read aloud the
3 content of that paragraph, and I am going to ask you
4 a series of questions about it. If you could do
5 that, just for the record.

6 A. Sure. Amended Schedule B. The debtor is
7 also a party to seven subcontractor agreements, in
8 quotes, agreements, with individuals who provide
9 services to the debtor as independent contractors.
10 The services under these agreements have been
11 performed and were paid for by the debtor prior to
12 the bankruptcy.

13 The agreements automatically renew unless
14 terminated. While the debtor may still retain the
15 services of the subcontractors under the agreements,
16 it is not obligated to do so. The agreements provide
17 the debtor with certain rights, including, but not
18 limited to, ownership rights and products created by
19 the subcontractors in connection with the agreements.

20 Q. Okay. And so you refer to seven
21 subcontractor agreements. Who were these agreements
22 with?

23 A. Seven individuals. I don't -- I don't have
24 their names.

25 Q. People, though, not companies?

1 A. I believe -- I've seen some of these. So --
2 and the ones I saw were people.

3 Q. Okay.

4 A. Now, whether it's their entity or the person
5 themselves, the ones I saw all had people's names.

6 Q. Do you know any of the people that were the
7 subcontractors listed here?

8 A. I know some of the names.

9 Q. Sure. What are they?

10 A. Seth Lockler [phonetic], and one other one
11 was -- I can't think of it.

12 Q. Okay. What services did these re- -- is it
13 proper to use "do" or "did" -- did these people
14 provide?

15 A. Is it properties? Did you...

16 Q. Is it proper -- oh, what services were
17 provided under the subcontractor agreements?

18 A. Yeah, I -- I don't know what they
19 specifically did or when they did it.

20 Q. Okay. Okay. Are they still...

21 A. My understanding is that in most of these
22 cases they were former employees. And then when they
23 stopped working, they wanted to work -- continue
24 working for us under a contract basis for some period
25 of time.

1 Q. And you don't -- you said you don't know
2 what they did. Do you know what type of thing they
3 did? Were these programmers, or what sort of
4 employees were they?

5 A. Yeah, I don't know.

6 Q. Okay. Are the contracts active now?

7 A. My understanding is that they are, with the
8 exception of Seth Lockler, who sent a termination
9 notice to the debtor.

10 Q. Are these seven individuals part of the 25
11 employees you're claiming are employees of the
12 debtor?

13 A. No.

14 Q. So these people would be in addition to the
15 25?

16 A. Yes.

17 Q. The services under the agreements have been
18 performed and were paid for by debtor prior to the
19 bankruptcy. Are they still being performed in any
20 case?

21 A. No.

22 Q. And when it says the services -- or the
23 debtor may still retain the services of the
24 subcontractors, that would apply to everybody but
25 Mr. Lockler?

1 A. Ask the question one more time.

2 Q. When the -- the schedule says, while the
3 debtor may still retain the services of the
4 subcontractors under the agreements --

5 A. Yeah.

6 Q. -- that would apply to everybody but
7 Mr. Lockler?

8 MR. KING: Form and foundation. You can go
9 ahead and answer if you know.

10 A. I believe it applies -- that -- yes. The --
11 it applies to all of them. And I don't know the
12 legal status of the termination notice, so I don't
13 know if it applies to Seth or not.

14 Q. (By Mr. Grams) Okay. The agreements
15 provide the debtor with certain rights. What rights
16 are you referring to here?

17 A. Generally confidentiality rights,
18 noncompete, slash, nonsolicitation rights.

19 Q. And it says ownership rights in the products
20 created?

21 A. That's what it says.

22 Q. Is it fair to assume from the language here
23 that these individuals were involved in the creation
24 of products?

25 A. You could draw that conclusion.

1 Q. Okay. When were these agreements signed?

2 A. I don't know.

3 Q. Were they all signed prior to the filing of
4 the bankruptcy?

5 A. Yes.

6 Q. I am going to ask this. I think you've
7 already answered it, but are you still using any of
8 these subcontractors?

9 A. No.

10 Q. What's the plan for continuing operations
11 for the debtor?

12 A. The plan right now is to continue to develop
13 the software, maintain it in current -- current
14 condition, and to continue doing that until we've
15 determined whether or not we can renegotiate
16 contracts with the four former customers.

17 Q. Does the debtor have any income at this
18 point?

19 A. No.

20 Q. And what about expenses?

21 A. Yes.

22 Q. Are they similar to what the expenses were
23 prior to the termina- -- or, the rejection of the
24 contracts with the customers?

25 A. I believe they are.

1 Q. Okay. If you're unable to make agreements
2 with the customers, what's the plan to turn the
3 company around and make money?

4 A. Well, the plan, if we -- if we can't
5 renegotiate contracts, the plan will be to go back to
6 the parent company and make them aware that we don't
7 have a need for 25 employees. We would have to
8 skinny it down quite a bit, with the goal being at
9 that point to sell the company with a core set of
10 employees to support the software.

11 And so the plan would be if there is no
12 new -- if there are no new contracts, we need to
13 lower the cash burn so that it gives us enough
14 runway, enough time to run an orderly sale process.

15 Q. Okay. And I don't want to put words in your
16 mouth, but it's -- it -- you have -- it's kind of a
17 two-prong plan?

18 A. Yes.

19 Q. Renegotiate or sell?

20 A. Yes.

21 Q. There is no plan for continuing operations
22 except in one of those two buckets; is that correct?

23 A. Yes.

24 Q. Okay. There was some mention in the -- one
25 of the earlier hearings about plans to redo the

1 software?

2 A. I am not familiar with redo the software.

3 Q. Okay. So there is no -- I guess I'll put it
4 this way. Are there any upgrades planned beyond what
5 you would have done in the ordinary course of
6 upgrading the software when you were operating under
7 the customer agreements?

8 MR. KING: Form. Answer if you can
9 understand.

10 A. So when we had the customers, we were
11 servicing the customers, we spent a lot of time
12 working on operational issues related to the so- --
13 customers as well as custom development related to
14 the customer requests.

15 And the current plan is to work on all of
16 the things that we didn't get a chance to work on
17 because we were too busy working on customer
18 requests. And so we have dozens and dozens and
19 dozens of items that we would like to do to this
20 software, but we just have never gotten to it because
21 we didn't have the time and resources to get it done.

22 So in terms of work to be done on that
23 software, there's more work than we'll ever be able
24 to get done. We're going to run out of money
25 probably long before we'll get to the bottom of that

1 list.

2 Q. (By Mr. Grams) Now, what are some examples
3 of things that are on that list?

4 A. I don't have any examples for you.

5 Q. During the TRO period, the customers
6 provided funds to continue the operation of the
7 business; is that right?

8 MR. KING: Form. Foundation.

9 A. Yes.

10 Q. (By Mr. Grams) Okay. Was any development
11 done during that period of time?

12 MR. KING: Same.

13 A. Um...

14 Q. (By Mr. Grams) And by "development," I mean
15 any modifications made to the software.

16 A. Modifications. No modifications were made
17 to the software, but the team worked on functionality
18 of the software. So there is work out there that
19 they're working on.

20 Q. Uh-huh.

21 A. But they never put it into the software.
22 They're still working on stuff. So they haven't put
23 anything into the software since August 16th.

24 Q. And they're -- they're the -- something
25 called the fall release, could you -- are you

O'BRIEN - Examination

1 familiar with that term?

2 A. Yes.

3 Q. Could you tell me what that means?

4 A. Yes. The card associations released new or
5 additional rules. And in order for our software to
6 run optimally, our software has to be in compliance
7 with the rules of these card associations. So when
8 these new rules or additional rules come out, we
9 modify our software to reflect and comply with those
10 new rules and additional rules.

11 Q. And is the fall release what the employees
12 were working on during the TRO period?

13 MR. KING: Foundation.

14 A. That is some of the stuff they were working
15 on during that --

16 Q. (By Mr. Grams) Have they completed --

17 A. -- TRO period.

18 Q. -- the fall release?

19 A. To my knowledge, no.

20 Q. What portions of the fall release have been
21 completed?

22 A. I don't know.

23 Q. What portions have not been completed?

24 A. I don't know.

25 Q. Is it complete except for applying it to the

1 software?

2 A. No.

3 Q. Where does the code for the fall release
4 reside?

5 A. I don't know.

6 Q. Is it with the debtor or the parent?

7 A. The debtor always holds that software, not
8 the parent.

9 Q. Does the parent have any rights to the fall
10 release code?

11 MR. KING: Foundation.

12 A. I don't know.

13 Q. (By Mr. Grams) Is the fall release code an
14 asset that you're amortizing on the schedule?

15 A. Is the fall release code on the schedules?

16 Q. Is it referred to on the schedules?

17 A. No.

18 Q. Are you working on the April release?

19 A. No.

20 Q. Do you plan to work on the April release?

21 A. Yes.

22 Q. Do you plan to work on the April release if
23 the contracts remain rejected?

24 A. Yes.

25 Q. How does PMP plan to do that without access

1 to the regulations from the customers?

2 A. I don't know.

3 Q. Is it PMP's -- if it's unable to sell and
4 it's unable to renew the contract, is it PMP's intent
5 to just go out of business?

6 A. No. We think -- we think we will -- we have
7 no doubt we'll be able to sell it to somebody at some
8 price.

9 Q. Okay. Let's talk about that. The -- so the
10 principal assets you've testified were -- are the
11 ass- -- are the software and the access to PGI's
12 employees; yes?

13 A. Yes.

14 Q. Okay. And has there been any attempt to
15 sell just the software?

16 A. I don't think so.

17 Q. Okay. Is there a plan to -- was there a
18 plan to sell the company?

19 A. Yes.

20 Q. And the value that you were intending to
21 sell it for?

22 A. Whatever the highest bidder would bid. And
23 if it was acceptable to us, that would be the number.
24 But I don't have a number.

25 Q. Where does the -- so I have heard the figure

1 \$48 million mentioned. Where does that figure come
2 from?

3 A. That came from the board of PMP.

4 Q. Okay. And what made -- what is the board
5 basing its \$48 million figure on?

6 A. Its perception of the value of that
7 software.

8 Q. Okay.

9 A. The business.

10 Q. And what is that based on?

11 A. It's based on the uniqueness of the software
12 itself, the efficiency of its interchange
13 qualification engine. It's based on the value of
14 that unique software in combination with the
15 employees who have the knowledge base to maintain and
16 enhance that software.

17 Q. So the -- the sales plan is -- has always
18 included the 25 employees that are assigned to the
19 debtor?

20 A. Yes.

21 Q. Okay. And you went through a sales process?

22 A. Yes.

23 Q. When was that?

24 A. It kicked off in January of 2016.

25 Q. Okay. And it was with -- Raymond James

1 listed it for you or solicited bids for you?

2 A. Yes.

3 Q. Okay. I don't want to put words in your
4 mouth. What -- you were hesitant there. What did
5 Raymond James do for you?

6 A. I don't think they listed it.

7 Q. Okay.

8 A. I don't -- what did they do. So they
9 identified potential buyers of the business. They
10 reviewed the records of the company. They created a
11 teaser they used to go out and approach the 104
12 prospects they identified.

13 Q. A teaser is a presentation or a -- a piece
14 of mail? What is a teaser?

15 A. A teaser is typically -- in the investment
16 banking world is a one- or two-page summary of the
17 business and the opportunity to either buy it or
18 joint venture it, whatever the opportunity is.

19 Q. Okay. So they created that?

20 A. It's to get somebody interested. And then
21 if you can get them interested through the teaser,
22 the next step is to get them to sign an NDA,
23 nondisclosure agreement. And once they sign an NDA,
24 then Raymond James would send them a confidential
25 offering memorandum.

1 Q. Okay. So let's go through that one at a
2 time. You said there were 102 teaser letters sent
3 out?

4 A. 104.

5 Q. 104? How many of those resulted in an
6 indication of interest that signed an NDA?

7 A. So not an indication of interest, but signed
8 an NDA?

9 Q. Yeah.

10 A. I am going to say approximately 30.

11 Q. And then let's back up. It sounds like
12 there's a step there indicating interest that is
13 between -- or it's -- precedes the signing an NDA.
14 Did anybody indicate interest and yet not sign an
15 NDA?

16 MR. KING: Can you say that again?

17 Q. (By Mr. Grams) Yeah.

18 A. I don't understand that.

19 Q. So you sent out 104 teasers. Thirty people
20 signed an NDA. Was there anybody that responded to
21 the teaser that did not sign an NDA?

22 A. I don't know.

23 MR. KING: Foundation. You can answer.

24 Q. (By Mr. Grams) Of those that signed an
25 NDA -- well, what's the next step after the NDA?

1 A. After the NDA, Raymond James would send them
2 a confidential offering memorandum.

3 Q. Okay.

4 A. And then Raymond James would ask for
5 indications of interest by a certain date.

6 Q. Okay.

7 A. Do you want to go from start all the way to
8 the end?

9 Q. Well, yeah. Let's take them one at a time.

10 A. Okay. Sure.

11 Q. So how many people did send back an
12 indication of interest?

13 A. Three.

14 Q. All right. And what was the next step?

15 A. The next step is, number one, to continue
16 working on the others who haven't given you an
17 indication of interest, but that's kind of a
18 background going on.

19 Q. Sure.

20 A. But with respect to the three that indicated
21 interest, an interest, one was declined, was rejected
22 by the debtor. The other two were allowed mana- --
23 into the due diligence room, basically an electronic
24 room where the records are kept.

25 Q. Okay.

1 A. And given time to spend with the management
2 to discuss the business.

3 Q. Who was the rejected one?

4 MR. KING: I am going to object on the
5 grounds of confidentiality. We have a
6 confidentiality agreement, I think, with these people
7 that expressed interest. And that was the subject of
8 our -- I think we raised in conjunction with the
9 protective order we've previously proposed. So I
10 would object to the disclosure of that information.

11 MR. GRAMS: We can table that, and I can
12 get it from you later.

13 MR. KING: Okay.

14 Q. (By Mr. Grams) Why did you reject this
15 party?

16 A. Price.

17 Q. And how much did they offer?

18 MR. KING: Same objection.
19 Confidentiality. That's part of what we think is
20 confidential.

21 MR. GRAMS: All right. I mean, I disagree
22 with you. We're not identifying the party. We're
23 identifying the amount that he's proposing to offer
24 the debtor. Are you instructing him not to answer?

25 MR. KING: Yeah. Yeah.

O'BRIEN - Examination

1 MR. GRAMS: All right.

2 Q. (By Mr. Grams) Okay. The ones that did due
3 diligence, they must have made an offer at that time
4 that the debtor decided to proceed with to due
5 diligence; is that correct?

6 MR. KING: Form.

7 Q. (By Mr. Grams) You can answer.

8 A. The PMP proceeded with two parties that
9 provided an indication of interest to allow them to
10 do due diligence and meet with management.

11 Q. And who were those parties?

12 MR. KING: Same objection. Confidential.

13 MR. GRAMS: Same instruction?

14 MR. KING: Yes.

15 Q. (By Mr. Grams) And who -- how much did
16 those parties offer?

17 MR. KING: Same ob- -- same objection.
18 Same instruction.

19 Q. (By Mr. Grams) There were three offers,
20 though, to buy the business, or three bids?

21 A. In- -- there were three indications of
22 interest.

23 Q. And those indications of interest provided
24 an amount they were interested in paying?

25 A. Sometimes they provided an amount.

1 Sometimes they provided a range.

2 Q. And did PGI reject all of the offers?

3 MR. KING: Form.

4 A. Are you referring to PMP?

5 Q. (By Mr. Grams) Well, PGI owned the debtor;
6 correct?

7 A. Correct.

8 Q. And these were offers to buy the debtor. So
9 would -- am I wrong to say that it would be PGI that
10 chose to accept or reject the offers to buy the
11 debtor?

12 A. It was discussed at both levels. Your
13 question is...

14 Q. Did PGI reject the offers to buy the debtor?

15 A. Reject the offers?

16 MR. KING: Form. I don't know that he said
17 there were offers to buy the debtor.

18 A. There were indications of interest.

19 Q. (By Mr. Grams) Okay. Did PGI reject the
20 indications of interest to buy the debtors?

21 A. In one instance, yes.

22 Q. And what about in the other two?

23 A. No.

24 Q. What happened in those situations?

25 A. In those situations the -- both of those

1 parties continued to the due diligence phase and the
2 management meetings. And after that phase, then you
3 have a call for actual offers.

4 Q. Okay.

5 A. And there were no offers submitted.

6 Q. Okay.

7 MR. GRAMS: Some of this has been covered
8 in the main schedule here, which is filing 103, which
9 is -- I am sure you have one, Sam, if you...

10 MR. KING: I do, yeah.

11 Q. (By Mr. Grams) Just a few questions on
12 this. And I think some of these have been covered
13 already, so I am going to go through Planet
14 Correspond- -- and I am on page 16 of 34, if you look
15 at the top.

16 But on your creditors with nonpriority
17 secured claims, you were asked about the 152,814 to
18 Planet Correspondence Technologies. And I believe
19 your testimony was you -- you didn't know what that
20 was for, but it says money loaned.

21 Would that have been in the form of a -- of
22 a check that Planet Correspondence Technologies sent
23 to the debtor?

24 A. I don't know.

25 Q. Okay. And is that -- with respect to the

1 \$12,012,372 for Planet Group, Inc., it also says
2 money loaned. You described a situation where you
3 were -- where the parent was sending the debtor
4 invoices?

5 A. Yes.

6 Q. And the debtor was either -- well, describe
7 how that 12 thou- -- or, \$12 million plus has
8 accumulated.

9 A. Okay. So each month Planet Group would send
10 an invoice to PMP saying, hey, you owe for the
11 compensation of these employees. And there could be
12 other issue -- other -- there could be other things
13 besides just compensation. It could be for some
14 office supplies that the parent paid for on behalf of
15 the subsidiary.

16 But by and large it's mostly compensation.
17 And that is the bulk of the \$12 million balance.
18 Now, if the subsidiary ran out of money and the
19 parent had to advance funding, I am guessing there
20 could be some of that in this balance, but I am not
21 sure about that.

22 Q. All right. Is there documentation
23 supporting all of these \$12 million?

24 A. Yes. They've been provided to all of the
25 customers.

1 Q. And is that the schedule that -- the chart
2 of accounts that we received?

3 MR. KING: Yeah. I think there was that.
4 There was about 300 pages of the schedule of
5 accounts, invoices and things like that.

6 A. Yes.

7 Q. (By Mr. Grams) Okay.

8 A. Each...

9 Q. And I have...

10 A. Each invoice.

11 Q. And I haven't summed those up, but if I sum
12 those up it will equal \$12,012,372?

13 A. I don't know.

14 Q. Okay.

15 MR. KING: I think that's accurate.

16 Q. (By Mr. Grams) All right. You were asked
17 about the facility. There is no allocation of lease
18 in that \$12 million?

19 A. Not in the last five years. There could
20 have been prior to that.

21 Q. And would that be included in this figure
22 that's owed to the parent?

23 A. Yes.

24 Q. Okay. And you said 80 percent of it was
25 employees. Will -- I want to get to that in a

1 minute. But were there any management fees?

2 A. No.

3 Q. So there would -- in that \$12 million there
4 are no payments to PGI or West Partners or anything
5 like that for managing the companies?

6 A. There were no payments to West Partners
7 ever. When the Planet Group was doing corporate
8 allocations years and years ago and they would
9 allocate rent to various subsid- -- business units --

10 Q. Uh-huh.

11 A. -- there could have been an allocation of
12 the CEO and the CFO's compensation across the units,
13 but I don't know about that.

14 Q. Why did Planet Group stop doing the
15 allocations?

16 A. Because the new CEO, Tom Nichting, didn't
17 like that process.

18 Q. Okay. Do you know why Tom didn't like it?

19 A. No.

20 Q. We'd have to ask him?

21 A. Yes.

22 Q. How do we get ahold of Tom?

23 A. Call him.

24 Q. Okay. We'd reach him through counsel? Does
25 he still work for PMP?

1 A. He works for Planet Group, Inc.

2 Q. Okay. So I could reach him through
3 Mr. King?

4 MR. KING: Well, I think you'd have to talk
5 to Planet Group because he's an employee of Planet
6 Group. Right?

7 THE WITNESS: Yeah.

8 MR. GRAMS: Okay.

9 MR. KING: So talk to their counsel.

10 Q. (By Mr. Grams) What documents show that
11 PGI's investment in PMP was debt financing as opposed
12 to equity financing?

13 A. Ask the question one more time.

14 Q. Okay. What documents show that PGI's
15 investment in PMP was debt financing as opposed to
16 equity financing?

17 A. A document? I think that that...

18 MR. KING: Form and foundation. Go ahead.

19 A. The balance sheet.

20 Q. (By Mr. Grams) Are there any written
21 agreements between PMP and PGI?

22 A. Any?

23 Q. Any.

24 A. Not that I am aware of.

25 Q. You said there was no lease. Are there any

1 notes for loans?

2 A. Between the parent and the subsidiary?

3 Q. Correct.

4 A. Not that I am aware of.

5 Q. Is there any agreement to let PMP use PGI's
6 employees?

7 A. What do you mean by "agreement"?

8 Q. Is there a written agreement?

9 A. No.

10 Q. Is there an oral agreement?

11 MR. KING: Form.

12 Q. (By Mr. Grams) I think I see the problem.
13 Is there an understanding between PMP and PGI that
14 takes the form of a contract that allows PMP to use
15 PGI's employees?

16 A. There is an un-...

17 MR. KING: Object to form and foundation.
18 It's because I think it calls for a legal conclusion,
19 but go ahead and answer to the extent you can.

20 A. Okay. There is an understanding between the
21 two entities, as you described, but whether or not it
22 forms a contract or not, I don't know.

23 Q. (By Mr. Grams) Well, describe the
24 understanding for me.

25 A. PMP needs employees to provide the services

1 they provide and build the software they build. And
2 the parent company has a 401K plan and a payroll
3 system and major medical, all the things you would
4 see in a typical employment environment.

5 And rather than replicate that at five --
6 for four or five entities, it's done at one entity.
7 And so the understanding is those employees do
8 work -- the PMP employees work on PMP business. And
9 the fact that they're employed by the parent, it's a
10 convenient way to do it, and it's an economical way
11 to do it.

12 And so the understanding is that they'll be
13 employed by the parent, but they'll basically work in
14 the business unit under the direction of the business
15 unit and the co- -- from an economic standpoint it's
16 a cost pass-through with no markup.

17 Q. And I heard that there's no markup. You're
18 not billing PMP more than the -- than you paid the
19 employees to do the work or to be employed there?

20 MR. KING: Object to form as to "billing."
21 Go ahead and answer.

22 Q. (By Mr. Grams) Well...

23 A. Correct.

24 Q. Okay. Does PGI have any obligation to allow
25 PMP to transfer its employees if PMP is sold?

1 A. Does...

2 MR. KING: Foundation.

3 A. You're asking if the parent has -- has what?

4 Q. (By Mr. Grams) Any obligation to transfer
5 the employees that work for PMP to a buyer if PGI --
6 or, if PMP is sold.

7 MR. KING: Foundation.

8 A. I don't know if they have an obligation.

9 Q. (By Mr. Grams) Are there any shared
10 employees between PGI and PMP?

11 MR. KING: Form.

12 A. Did you say shared employees?

13 Q. (By Mr. Grams) I said shared employees.

14 A. Okay.

15 Q. I can be more clear, if it's helpful.

16 A. Yes.

17 Q. Are there any employees that work for
18 more -- or, that do work for more than just PMP?

19 A. The CEO of PM- -- the CEO of the parent
20 works on all of the business units.

21 Q. Who is that?

22 A. Tom Nichting.

23 Q. Okay. Is he the only one?

24 A. Amber Blohm is in-house counsel. She works
25 for Planet Group, Inc., and she works on the business

1 of all of the business units.

2 Q. Okay.

3 A. There was a controller who was employed by
4 Planet Group, Inc., and worked on the financial
5 reporting of Planet Group, Inc., as well as the other
6 operating business units. In the -- in the past,
7 going back probably a couple of years, there was a VP
8 of sales who worked at Planet -- worked -- was
9 employed by Planet Group, and he worked on more than
10 one business unit. And there was a marketing person
11 in the past, and she was employed by Planet Group,
12 and she worked on more than one business unit. That
13 is the extent of shared employees as far as I can
14 tell.

15 Q. Do you have a CIO?

16 A. Not at the holding company. Not at Planet
17 Group.

18 Q. Who does that person work for?

19 A. There is no C...

20 Q. Is there a -- well, what's her name?
21 Sherry?

22 A. Sherry Magwire.

23 Q. What does Sherry Magwire do?

24 A. She is the chief technology officer for PMP.

25 Q. She is not a PGI employ- -- or, person?

1 A. I don't view her as one.

2 Q. Okay.

3 A. She doesn't work on any of the other
4 business units.

5 Q. So she's an employee of PGI, but her job is
6 to be the chief technology officer of PMP and not the
7 other units; is that correct?

8 MR. KING: Foundation. Foundation with
9 respect to "employee," but go ahead.

10 A. That's correct.

11 Q. (By Mr. Grams) Okay. Now, these people
12 that have functions that are involved in more than
13 one unit --

14 A. Okay.

15 Q. -- and by "these people" I refer to the ones
16 you just mentioned, the CEO, controller, VP of sales,
17 et cetera --

18 A. Yes.

19 Q. -- are their salaries allocated to the
20 various business units?

21 A. No. They have not been in the past five
22 years, since Tom Nichting stopped all allocations
23 going across the business units, but prior to that
24 they could have been.

25 Q. And Ms. Magwire, she is allocated

1 100 percent to PMP?

2 A. That's my understanding.

3 Q. Okay. With re- -- is she one of the 25
4 employees of the people you referred to as employees
5 of PMP?

6 A. Yes.

7 Q. Okay. Name as many as you can of the other
8 people that are working for PMP.

9 A. Do I have to do that?

10 MR. KING: Yeah, I'd object on the grounds
11 of confidentiality relating to that. You know,
12 that's been a subject of dispute between the parties
13 because we've had issues relating to solicitation of
14 employees. So we don't want to get into that and
15 disclose those names at this point.

16 MR. GRAMS: Well, I am going to insist.
17 Are you instructing him not to answer?

18 MR. KING: What do you need to know that
19 information for?

20 MR. GRAMS: Well, I am going to ask him
21 some questions about each one of these people related
22 to the allocation of their work among the business
23 units and also what their job titles are and what
24 their functions are.

25 MR. KING: Well, I think you can do that

1 without getting their names. He can tell you the
2 individuals that are working on Planet Merchant
3 Processing, but...

4 MR. GRAMS: Yeah, but I like doing it this
5 way. So I am -- I am going to ask the question. Are
6 you instructing him not to answer? I don't think you
7 have a right to do that.

8 MR. KING: I am instructing him not to
9 answer or provide information relating to the
10 identity of the employees, the names.

11 Q. (By Mr. Grams) All right. Let's move
12 forward with the job titles. What are the job titles
13 of the PGI employees that perform functions for PMP?

14 A. Are you talking about the 25 people that
15 work in PMP?

16 Q. Yes, unless the -- my question happened to
17 be broader than that --

18 A. Ask the question again.

19 Q. -- if there's more than the 25.

20 A. I am just trying to understand the question,
21 so ask it again.

22 Q. Yeah. No, if there's more than that, that's
23 fine, but I think we understand each other. What are
24 the job titles of the 25?

25 A. I don't know.

1 Q. Well, you just testified that Sherry
2 Magwire's the -- her job title is chief technology
3 officer?

4 A. Correct.

5 Q. That's one. Are there any others?

6 A. I don't -- I don't know what they are.

7 Q. Okay. What do those people do?

8 A. They develop software.

9 Q. Okay.

10 A. And they assist customers with running
11 cycles, nightly cycles.

12 Q. And what's a nightly cycle?

13 A. A nightly cycle is when transactions get
14 processed at the merchant level, they go to the
15 processor, which would be our customer. And our
16 customer uses our software that they have licensed
17 from us to process those transactions.

18 And batches of those transactions are sent
19 through a system so that they can go to the card
20 associations as well as the card issuers to settle
21 funds. And each time you send batch -- a batch
22 through, you're running a cycle. Okay?

23 Q. Okay. Are those services that you provide
24 for all four of the customers?

25 A. No.

1 Q. Is it just for TransFirst?

2 A. No.

3 Q. Who do you provide those services for or did
4 you provide those services for prior to the
5 rejection?

6 A. TransFirst and Worldpay.

7 Q. Okay. And how many of the employees are
8 involved in -- I am going to call those nightly
9 clearing operations?

10 A. Yeah. More than five, but less than ten.

11 Q. Okay. And how many -- I am going to try and
12 draw a distinction between people involved in
13 operating the software and people involved in
14 developing the software.

15 A. We'll call them operators and developers.

16 Q. Excellent. How many -- how many operators
17 are there among the 25?

18 A. More than five, less than ten.

19 Q. And how many developers?

20 A. That would be less than 20, more than 15.

21 Q. Okay. Now, I understand you're the
22 corporate representative. You haven't been involved
23 in operations. Who would be able to answer these
24 types of questions with more precision?

25 A. Sherry Magwire.

1 Q. Okay. Are there any other categories
2 besides the chief technology officer, the operators
3 and the developers that work -- or, that do work in
4 Planet Merchant Processing?

5 A. Not that I am aware of.

6 Q. So that would encompass the whole 25?

7 A. Yes.

8 Q. Okay. Are any of these operators,
9 developers, or the chief technology officer subject
10 to an allocation of their salary -- or, salary
11 between more than one business unit?

12 A. No.

13 Q. So all 25 spend 100 percent of their time
14 working for -- or, performing services for Planet
15 Merchant Processing?

16 A. Yes. That's my understanding.

17 Q. Okay. What about your time? Are you
18 allocated as a -- as a Planet Merchant Processing
19 individual?

20 A. Am I allocated?

21 Q. Yeah. You're the president...

22 MR. KING: As to compensation?

23 MR. GRAMS: Yes.

24 MR. KING: Okay.

25 A. No.

1 Q. (By Mr. Grams) Okay. And you're not
2 included in the 25?

3 A. Correct.

4 Q. When was -- when did you first start
5 discussing going into bankruptcy?

6 MR. KING: Jason, it seems like we've been
7 going for quite a while on this, and we've got other
8 questions, other people that want to ask questions.
9 I mean, if you guys want to do a 2004 examination,
10 we'd be agreeable to that. But, you know, how
11 much -- I mean, it seems like we're getting into
12 issues that may not relate to the bankruptcy.

13 MR. GRAMS: I am getting towards the end.
14 I do think that these issues relate to the
15 bankruptcy. So...

16 MR. KING: As to why -- when they...

17 MR. GRAMS: Well, I am not going to -- I am
18 not going to engage with you on why I think they do.
19 Are you instructing him not to answer? I have got a
20 little bit more time left here.

21 MR. KING: Yeah. Go ahead.

22 Q. (By Mr. Grams) Okay. When did you first
23 start discussing filing for bankruptcy?

24 A. The earliest I can recall is April of 2016.

25 Q. And whose idea was it?

1 A. Mine.

2 Q. And what was -- well, strike that.

3 All right. I am just going to ask you a
4 couple more questions here.

5 A. Okay.

6 Q. On page 12 of 103, which is the thick one --

7 A. Twelve of 34?

8 Q. -- this is headed part seven, office
9 furniture, fixtures and equipment. There's computer
10 equipment, fixtures, furniture and fixtures,
11 software. Do you see that?

12 A. Yeah.

13 Q. So under software, and line 67 says
14 software, you've got a book cost of 954,398.68. What
15 does that software refer to?

16 A. I am guessing that that's a couple of
17 things. First, it would -- my understanding is that
18 it includes some software that we have purchased to
19 run our computers and run our operations.

20 Q. Okay.

21 A. And there may be, in addition to that, some
22 capitalized software costs related to the development
23 of A360 for other software products developed by the
24 debtor.

25 Q. As you sit here today, you don't know if

1 that's the case or not?

2 A. Don't know.

3 Q. So it's got -- there are some -- there is
4 some third-party software in there and there may be
5 some software you developed?

6 A. Capitalized, yep.

7 Q. Does Micro Focus COBOL mean anything to you?

8 A. A little bit.

9 Q. Okay. Is that a piece of software that
10 might be included in this figure here?

11 A. I don't know.

12 Q. Okay. What about Celerity Unikix? And I'll
13 spell it. U-n-i-k-i-x.

14 A. I don't know.

15 Q. Okay. But you're -- you're declaring
16 this -- these software values as assets of PMP; is
17 that correct?

18 A. Yes.

19 Q. So it's PMP's position -- if those two
20 pieces of software are included in this number, it's
21 PMP's position that PMP owns those licenses; is that
22 correct?

23 A. Yes.

24 MR. GRAMS: Okay. I'd turn it over to
25 other counsel.

1 TRUSTEE JENSEN: Thank you. And,
2 Mr. Wright, would you like to enter your appearance?

3 MR. WRIGHT: Randy Wright on behalf of EVO
4 Merchant Services.

5 EXAMINATION

6 BY MR. WRIGHT:

7 Q. Mr. O'Brien, when did Mr. Nichting -- by the
8 way, how do you spell Nichting?

9 A. N-i-c-h-t-i-n-g.

10 Q. When did he resign as president of the
11 debtor?

12 A. I assume the same day that I became
13 president. So it was August 10th or 12th, right in
14 there.

15 Q. Okay. And did he have a conversation with
16 you about resignation?

17 A. Yes.

18 Q. Okay. Tell me about that conversation.
19 What was said?

20 A. I initiated the conversation and said, Tom,
21 if we put this into bankruptcy, is that going to be a
22 problem for you? And he said, I'd prefer not to be
23 associated with the bankruptcy. And I said, well, I
24 am happy to step in and take on the role of president
25 if we go into bankruptcy.

1 Q. Was there more to the conversation than what
2 you just related?

3 A. No.

4 Q. So I take it the bankruptcy had been
5 discussed with -- between you and Mr. Nichting
6 earlier so he understood some context of what you
7 were talking about?

8 A. Earlier than August 10th? Yes. Yes.

9 Q. How much earlier?

10 A. It would have been in -- I am guessing. Is
11 that okay to guess?

12 MR. KING: I'd prefer you not speculate,
13 but...

14 Q. (By Mr. Wright) Estimation is better than a
15 guess.

16 A. I don't -- I'd estimate it was June or July.

17 Q. And did -- in those discussions did he voice
18 opposition to a bankruptcy filing by PMP?

19 A. No. Did I object? Is that what you're
20 asking?

21 Q. Just -- no. Did Mr. Nichting voice any
22 opposition to a bankruptcy filing by PMP?

23 A. I don't recall any objection.

24 Q. When were the -- were those conversations
25 with Mr. Nichting in the -- in the presence of others

1 besides yourself?

2 A. I don't recall.

3 Q. Was this at a board meeting?

4 A. The conversation I just described to you was
5 Tom and I in his office.

6 Q. But...

7 A. It was not in a board meeting.

8 Q. And that was in -- the conversation I am
9 talking about is in June or July when there was a
10 discussion about a bankruptcy?

11 A. Yeah, I don't know.

12 Q. You don't recall?

13 A. I -- I don't know.

14 Q. So what -- other than employee salaries,
15 what liabilities is the debtor incurring now post
16 rejection of the contracts?

17 A. Postage, office expense, communication
18 expense, mainly cell phones, some travel. Could be
19 meals.

20 Q. You said that Mr. Nichting didn't like or
21 didn't want to allocate certain costs that the parent
22 was incurring that might have been allocated across
23 to the business units. Did he ever express to you
24 the reasons why?

25 A. He said he got a cleaner -- a cleaner vision

1 of each business unit.

2 Q. Without allocation of those costs?

3 A. Yes.

4 Q. In your view does PMP owe Planet Group for
5 cost allocations other than employees?

6 A. For cost allocations?

7 Q. Yeah. Costs that are at the parent, but not
8 being -- but, per Mr. Nichting, not being allocated
9 to PMP? In other -- and let me back up.

10 So Mr. Nichting likes to see -- I think what
11 you said, he gets a clearer vision of the companies
12 without allocation. But my question is, does PMP,
13 regardless of what allocation has been put in place
14 or hasn't, does PMP owe Planet Group for allocation
15 other than employee allocation?

16 A. Does it owe. So --

17 MR. KING: Form. Go ahead.

18 A. -- I believe that if Planet Group does not
19 invoice PMP for rent, for example, that PMP doesn't
20 owe any rent. Does that answer your question?

21 Q. (By Mr. Wright) I think so. And is Planet
22 Group -- is PGI invoicing PMP for anything other than
23 employee costs?

24 A. Yes, but only if there was a direct cost.
25 For example, if there was a software license that PMP

1 needed for its business unit, then if that software
2 was bought through Planet Group, it would be
3 invoiced -- or, it would be paid by Planet Group, but
4 then invoiced down to PMP. So anything that's
5 directly identifiable as a PMP expense, it could be
6 bill- -- invoiced and owed.

7 Q. There was talk earlier about the
8 subcontractor agreements with what I believe were
9 some former employees of the PMP. Do you recall
10 that?

11 A. Yes.

12 Q. Have you seen those documents?

13 A. I have seen some of those documents, yes.

14 Q. Okay. How recently?

15 A. Within the last 30 days.

16 Q. Okay. Do they allow the other signer to the
17 documents to terminate them at will?

18 A. At will? Um...

19 Q. Okay. Or is there a termination notice
20 period?

21 A. There is a termination provision in the
22 agreement, and I believe it says that -- I'd be
23 speculating.

24 MR. KING: Yeah.

25 A. I don't recall the terms.

1 Q. (By Mr. Wright) All right. Are these
2 documents all basically the same form of document,
3 but signed by different people?

4 A. Pretty much.

5 Q. And where are they? Are they at the -- does
6 your counsel have a copy?

7 MR. KING: I do.

8 MR. WRIGHT: Is that something you'd agree
9 to share with us?

10 MR. KING: Yeah. We can talk about that.

11 THE WITNESS: Not the names.

12 MR. KING: Yeah. The names we're a little
13 bit concerned about, obviously. There is a
14 nonsolicit clause in the agreement -- a noncompete,
15 not a nonsolicit.

16 MR. WRIGHT: It's not a nonsolicit.

17 MR. KING: I don't think it is.

18 THE WITNESS: You're speculating.

19 MR. KING: I am speculating. Well, there's
20 [indiscernible]. I am not under oath. But we'll
21 work with you on that. Obviously, my concern about
22 that is contacting of these individuals that we have
23 noncompetes with, along with the identification of
24 the employees. And that's why we're objecting to the
25 confidentiality and disclosure of those if...

1 MR. WRIGHT: Well, it seems like we -- let
2 us see the contracts with the names blacked out, and
3 we can discuss later whether we're entitled to the
4 names.

5 MR. KING: Yeah. That's agreeable.

6 MR. WRIGHT: I don't think I have any other
7 questions.

8 TRUSTEE JENSEN: Thank you, Mr. Wright.

9 Mr. White, would you like to enter your
10 appearance?

11 MR. WHITE: Thank you. It's Frank White
12 for Worldpay U.S., Incorporated. And I -- just I am
13 looking back through my notes. I don't believe I
14 have anything more for Mr. O'Brien.

15 TRUSTEE JENSEN: All right. Thank you,
16 sir.

17 MR. WHITE: Thank you.

18 TRUSTEE JENSEN: Are there any other
19 parties that would like to ask any questions?

20 MR. ADAMS: Yes.

21 TRUSTEE JENSEN: Sure. Go ahead and enter
22 your appearance.

23 MR. ADAMS: Aaron Adams with TSYS
24 Transfers. And I have just two, kind of, follow-up
25 questions to what Mr. Grams asked earlier, more

1 clarification.

2 EXAMINATION

3 BY MR. ADAMS:

4 Q. The first one relates to the -- you had
5 talked about there was a -- approximately a million
6 dollars less revenue from '14 to '15. Can you kind
7 of walk through your reasoning behind that again? I
8 didn't quite under- -- hear it all the way through.
9 I just wanted to either -- rearticulate your answer
10 for that one, please.

11 A. Yeah. More than likely it's the result of
12 two -- two issues. One is the amount of custom work
13 we do --

14 Q. Okay.

15 A. -- for our customers. Sometimes the
16 customers ask us to do a lot of work during the year
17 and other years they don't ask for much. So that can
18 cause our revenue to fluctuate.

19 The second reason is the sale or license of
20 software. So that tends to be lumpy. That happens
21 one time. And our -- we've had some products in
22 recent years, like TRR, VR, AmEx OnePoint, AmEx
23 OptBlue, these are all new modules that are built
24 around A360. And some of the customers license some
25 of those products from us. And that would have

1 caused the lumpiness in revenue. That's my best
2 guess.

3 Q. So you're suggesting that in that particular
4 case for those modules that they were only buying
5 them in '14 and not necessarily in '15. That's what
6 would have caused the revenue to go down as a -- as
7 an additional by-product of the noncustom work?

8 A. That's my guess.

9 Q. Okay. If the four customers have -- again,
10 this is just a clarification based on your testimony
11 earlier. If the four customers have rejected the
12 contracts and your goal is to sell this software in a
13 better form, how are you obtaining the -- as example,
14 the April spec -- specs for the April reg release?

15 A. We don't have the April specs, to my
16 knowledge.

17 Q. How would you go about getting those if
18 you've rejected all four clients' con- -- or, four
19 customers' contracts?

20 A. I don't know.

21 MR. ADAMS: Okay. That's all I have?

22 TRUSTEE JENSEN: Okay. Thank you.

23 Any follow-up questions?

24 MR. GRAMS: I don't have any.

25 TRUSTEE JENSEN: Mr. King, do you have any

1 questions?

2 MR. KING: I just have one follow-up
3 question.

4 EXAMINATION

5 BY MR. KING:

6 Q. Okay. So is it possible that you can enter
7 into another contract with another customer, not one
8 of the customers in this case, and that information
9 could be provided to you?

10 A. Yes.

11 MR. WRIGHT: And who might that customer
12 be?

13 Q. (By Mr. King) Do you know of any possible
14 customers?

15 A. Yeah. There are dozens and dozens of them
16 out there.

17 MR. KING: I have nothing further.

18 TRUSTEE JENSEN: Okay. Thank you. And do
19 any of the creditors want to leave the 341 meeting
20 open? You asked some questions that you asked him
21 that he refused to answer, and I...

22 MR. GRAMS: I think for right now, yeah.

23 TRUSTEE JENSEN: Okay. So I'll just -- I
24 am just going to leave it open with a right to
25 reserve the right to continue the meeting of

1 creditors. If you're unable to get the information
2 and you need to have the judge determine whether or
3 not certain questions they're required to answer, you
4 can do that and...

5 MR. KING: Yeah. That's agreeable.

6 TRUSTEE JENSEN: All right.

7 THE WITNESS: Can I do it -- can I do it by
8 phone?

9 MR. GRAMS: Thanks very much.

10 TRUSTEE JENSEN: Not -- not unless you go
11 to the U.S. Trustee's Office in San Diego and they
12 can swear you in maybe. That might be a possibility.

13 THE WITNESS: Okay.

14 TRUSTEE JENSEN: And would be the only --
15 but -- and, I mean, I think it's unlikely, but -- and
16 I am hoping it's unlikely. Normally you guys work it
17 out and get what you want, but it's -- there's a
18 possibility that...

19 (End of audio recording.)

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